IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Sikander Sha
vs.
Lrs. Of late Abdul Latif.

S.B.CIVIL SECOND APPEAL NO.464/2005 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 31.8.2005 PASSED BY SHRI O.P. SINGH, ADDITIONAL DISTRICT JUDGE, BALI IN CIVIL FIRST APPEAL NO.18/1998.

DATE OF JUDGMENT ::: 3.3.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. S Singh, for the appellant.

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BY THE COURT:

Heard learned counsel for the appellant.

It appears that the plaintiff/respondent filed a suit for eviction of his tenant (appellant) earlier also and that suit no.48/1976 was decreed by the trial court on 23.11.1984. The suit was filed on the ground of default also. In that suit, the rent was determined and the

defendant tenant paid the rent to the landlord, therefore, issue no.1 regarding default was though decided in favour of the plaintiff landlord still the suit for eviction on the ground of default was dismissed. However, the suit for partial eviction was decreed. While doing so, the rent was reduced from Rs.35/- to Rs.25/-.

The defendant committed second default, therefore, the suit for eviction was filed by the plaintiff which was decreed by the two courts below by the impugned judgments and decrees. Hence, this second appeal.

According to the learned counsel for the appellant, in the first suit, the plaintiff obtained the decree for eviction of the appellant from the part of the premises and thereafter, rent was reduced. According to learned counsel for the appellant, in the earlier suit, the suit was not decreed on the ground of first default and, therefore, the plaintiff has not availed the benefit of first default for which he is entitled under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below and also perused the judgment dated 23.11.1984, copy of which is provided by learned counsel for the appellant.

It is clear from the judgment dated 23.11.1984 that the rent was determined and the tenant took benefit of first

default. The suit for eviction on the ground of default was dismissed because the defendant paid monthly rent during the pendency of the suit and also paid the arrears of rent. As far as the second default is concerned, that is a finding of fact and has not been seriously challenged in this Court.

The appellant's contention that he has not availed the benefit of first default in earlier suit is absolutely wrong, therefore, the two courts below rightly decreed the suit on the ground of committing second default.

In view of the above, no substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellant prayed that sufficient time may be granted to vacate the suit premises because the appellant is an old tenant and is running his business and he will have to make alternative arrangement.

Though no notice has been issued to the respondent but in the interest of justice, this Court deems that the appellant be granted some time to vacate the suit shop.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of one months that he shall hand over the vacant possession to the landlord by or before 28.2.2007 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of

two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.3.2007. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

In case, the respondent has any grievance against the ex-parte grant of time by this Court, he may apply for vacation of this order.

With the aforesaid concession, this appeal is dismissed.

A copy of this order be supplied by the appellant to the respondent by registered post.

(PRAKASH TATIA), J.

S.Phophaliya